

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

Voxer, Inc. and Voxer IP LLC

Plaintiffs,

v.

Facebook, Inc. and Instagram LLC

Defendants.

Civil Action No. 1:20-cv-00655-ADA

Jury Trial Demanded

JOINT CLAIM CONSTRUCTION STATEMENT

In accordance with the Order Governing Proceedings (Dkt. 31) and the First Amended Scheduling Order (Dkt. 52) entered in this action, Plaintiffs Voxer, Inc. and Voxer IP LLC (collectively “Voxer”) and Defendants Facebook, Inc. and Instagram LLC (collectively, “Facebook,” and together with Voxer, the “Parties”) submit this Joint Claim Construction Statement. The Patents-in-Suit are U.S. Patent Nos. 8,180,030 (the “’030 patent”); 9,634,969 (the “’969 patent”); 10,109,028 (the “’028 patent”); 10,142,270 (the “’270 patent”); and 10,511,557 (the “’557 patent”). Voxer currently asserts claims 1, 4, 13, 16, 33, 36, 38, 44, and 47-48 of the ’030 patent; claims 6, 8, 15-16, 25, and 28 of the ’969 patent; claims 5 and 12 of the ’028 patent; claims 34, 36-38, 40-41, 43-44, 47-49, 51, and 55 of the ’270 patent; and claims 1-3, 9, 14, 16, 18, 23, 45-46, 51, 54, and 57-58 of the ’557 patent. Concurrent with this submission, the Parties are jointly submitting PDF versions of all as-filed briefing and exhibits to the law clerk.

I. AGREED CONSTRUCTIONS AND POINTS OF AGREEMENT

The Parties have not agreed on the construction of any claim terms in the Patents-in-Suit.

II. LIST OF DISPUTED TERMS FOR CONSTRUCTION

The Parties provide the following list of disputed terms for construction:

No.	Claim Term¹	Voxer’s Construction	Facebook’s Construction
1.	“end-to-end connection” (Facebook) ’270 patent, cls. 34, 55 ’969 patent, cl. 16 ’557 patent, cls. 1, 16, 45	Plain and ordinary meaning	“connection between network endpoints in which connection state necessary to maintain the connection exists at the endpoints”

¹ Unless one of the Parties is specified in parentheses, the Parties have jointly proposed construction of these claim terms.

2.	<p>“persistent storage” (Facebook)</p> <p>’030 patent, cls. 1, 13, 33, 44</p>	Plain and ordinary meaning	“nonvolatile storage medium with no inherent limitation on how long data can be stored, allowing for archiving and later retrieval of data”
3.	<p>“persistently store” / “persistently stored” / “persistently storing” (Facebook)</p> <p>’030 patent, cls. 1, 33, 38</p>	Plain and ordinary meaning	“retain/ retained/ retaining in a nonvolatile storage medium with no inherent limitation on how long data can be stored, allowing for archiving and later retrieval of data”
4.	<p>“synchronous connection” (Facebook)</p> <p>’969 patent, cl. 8</p>	Plain and ordinary meaning	“connection in which the sending and receiving devices must define a communication path between the sending and receiving devices before exchanging data”
5.	<p>“incoming message behavior policy”</p> <p>’028 patent, cls. 1, 5</p>	“received data indicating how the embeddable communications software module responds to incoming messages”	“an advance instruction provided by the software application, which instruction governs how the module should respond to new, incoming messages”
6.	<p>“An embeddable communications software module as recited in claim 1 wherein the embeddable communications software module is further arranged to:...” (Facebook)</p> <p>’028 patent, cl. 5</p> <p>“An embeddable communications software module that allows a software application to access a communications system providing both time delayed and near real time</p>	<p>Plain and ordinary meaning.</p> <p>No term or claim of the ’028 patent should be governed by 35 U.S.C. § 112(f).</p>	Subject to 35 U.S.C § 112(f); indefinite; preambles are limiting.

	communication, the embeddable communications software module stored in a non-transitory tangible computer readable storage medium wherein the embeddable communications software module is arranged to:...” (Facebook) '028 patent, cls. 1, 12 ²		
7.	Preambles of Claims 1, 5, and 12 of the '028 patent (Facebook)	Not limiting	Preamble is limiting.
8.	Preamble of Claim 16 of the '969 patent (Facebook)	Not limiting	Preamble is limiting.
9.	Preambles of Claims 1 and 33 of the '030 patent (Facebook)	Not limiting	Preamble is limiting.

² Facebook states that because claim 5 depends from claim 1, the claim language relating to the means-plus-function analysis raised by Facebook includes the entirety of claims 1, 5 and 12—save the last limitation of claims 1 and 12.

Dated: September 14, 2020

Respectfully submitted,

By: /s/ Paven Malhotra

Robert A. Van Nest
rvannest@keker.com
Christa M. Anderson
canderson@keker.com
David J. Silbert
dsilbert@keker.com
Eugene M. Paige
epaige@keker.com
Matthew W. Werdegarr
mwerdegarr@keker.com
Paven Malhotra
pmaalhotra@keker.com
KEKER, VAN NEST & PETERS LLP 633
Battery Street San Francisco, CA 94111
Tel: 415-391-5400

Michael E. Jones
SBN: 10929400
Patrick C. Clutter
SBN: 24036374
POTTER MINTON, PC
110 North College, Suite 500
Tyler, Texas 75702
Tel: 903-597-8311
Fax: 903-593-0845
mikejones@potterminton.com
patrickclutter@potterminton.com

*Attorneys for Defendants Facebook, Inc.
and Instagram LLC*

By: /s/ Kevin P.B. Johnson (by permission)

Kate Kaufmann Shih, SBN: 24066065
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
711 Louisiana St., Suite 500
Houston, Texas 77002
Telephone: (713) 221-7000
Fax: (713) 221-7100
kateshih@quinnemanuel.com

Kevin P.B. Johnson, CA Bar No. 177129
Robert W. Stone, CA Bar No. 163513
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, California 94065
Telephone: (650) 801-5000
Fax: (650) 801-5100
kevinjohnson@quinnemanuel.com
robertstone@quinnemanuel.com

Sam Stake, CA Bar No. 257916
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
50 California Street, 22nd Floor
San Francisco, California 94111
Telephone: (415) 875-6600
Fax: (415) 875-6700
samstake@quinnemanuel.com

J. Mark Mann, SBN: 12926150
G. Blake Thompson, SBN: 24042033
MANN | TINDEL | THOMPSON
300 West Main Street
Henderson, Texas 75652
Telephone: (903) 657-8540
Fax: (903) 657-6003
mark@themannfirm.com
blake@themannfirm.com

*Attorneys for Plaintiffs Voxer, Inc. and
Voxer IP LLC*

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September, 2020, true and correct copies of the foregoing document were served on the following counsel of record at the addresses and in the manner indicated:

VIA CM/ECF

Robert Van Nest
rvannest@keker.com
Christa Anderson
canderson@keker.com
David Silbert
dsilbert@keker.com
Eugene Paige
epaige@keker.com
Matthew Werdegarr
mwerdegarr@keker.com
Paven Malhotra
pmaalhotra@keker.com
Kristen E. Lovin
klovin@keker.com
Puja V. Parikh
pparikh@keker.com
Ryan Hayward
rhayward@keker.com
KEKER, VAN NEST & PETERS LLP
633 Battery Street
San Francisco, CA 94111-1809
Tel: 415-391-5400

Michael E Jones
mikejones@potterminton.com
Patrick C. Clutter
patrickclutter@potterminton.com
POTTER MINTON, PC
110 North College, Suite 500
Tyler, Texas 75702
Tel: 903-597-8311
Fax: 903-593-0846

/s/ Gavin Snyder

Gavin Snyder